to the B Ry. Co. a franchise to run a railway, but made no such provision for the sale of tickets. In 1900 the defendant company was incorporated with power to purchase and acquire other railways, and to use and enjoy the rights of such companies upon the same terms as they themselves had. The defendant company purchased the franchises and property of the A and B companies. Thereafter, in 1907, the legislature of Michigan annexed part of the township of Greenfield to Detroit, and provided that all the state and city ordinances applicable to Detroit should apply to the annexed territory. The Supreme Court of Michigan, in issuing a mandamus to compel the defendant to observe the provisions of the ordinance of 1889, construed the contract of the defendant company with the city to mean that the company was to sell eight tickets for twenty-five cents within the city limits as the limits should be extended. *Held,* that the state court's construction of the contract would not be accepted by the Supreme Court, and that the act of 1907 impaired the obligation of the contract. Brandeis and Clark, JJ., *dissenting.*

The Supreme Court as a general rule will accept the construction placed by the highest court of the state upon the state constitution and statutes, and upon contracts alleged to be affected by them; but this rule will not be applied when the question before the court is whether there has been an impairment of the obligation of a contract. *Delmas v. Insurance Company* (1871) 14 Wall. (U. S.) 661; *Jefferson Bank v. Skelly* (1861) 1 Black (U. S.) 436. It will not interfere with a judicial decision on a construction of the terms of a contract, unless there is a statute involved. *Bacon v. Texas* (1895) 163 U. S. 207. The impairment clause of the constitution is concerned only with legislative acts. *New Orleans Gas Co. v. Louisiana Light Co.* (1885) 115 U. S. 650. Where a state court enforces a subsequent statute, its construction of the contract will not be accepted by the Supreme Court even though the act is not specifically mentioned in the decision of the state court. *Carondelet Canal and Navigation Company v. State of Louisiana* (1913) 233 U. S. 362. To accept the construction of the state court in the principal case is to allow any state court, by putting a strained construction upon a contract, to deprive the Supreme Court of its jurisdiction. The court in refusing to accept the construction of the state court seems to be altogether correct, and the decision is in accord with the settled policy of the Supreme Court to decide for itself what the terms of the contract are when the question of the impairment of the obligation of a contract is involved.

F. L. McC.

CRIMINAL LAW—ACCUSED AS WITNESS—COMMENT ON OMISSIONS IN TESTIMONY.—CAMINETTI V. UNITED STATES (1917) 37 SUP. CT. REP. 192.—In the *Diggs* case, the defendant voluntarily took the stand in his own behalf, but failed to explain incriminating circumstances and events already in evidence in which he had participated, and concerning which he was fully informed. *Held,* that such failure justified comment by the court, and could be considered by the jury with all the other circumstances in reaching a verdict.

The defendant in a criminal case is under no obligation to become a witness, and his failure to take the stand does not create any presumption against him. Act of March 16, 1878; 20 St. at L. 30, chap. 37; Comp. St. 1913, sec. 1465. Whether the defendant's failure to testify as to material matters, having taken the stand, is ground for comment by the court, and the subject of inference by the jury, is a disputed point, hitherto undecided by the Supreme Court. The cases in that court in which the question has been argued have involved the subsidiary question of the right of cross-examination under the federal rule, and have been disposed of either upon the ground that the limit to the right of cross-examination was not exceeded, *Fitzpatrick v. United States* (1900) 178 U. S. 304; or, if exceeded, the answers given were not prejudicial to the respondent, *Sawyer v. United States* (1906) 202 U. S. 150. The Circuit Court of Appeals, in the eighth and first circuit, has held contrary to the principal case, on the ground that too great latitude is thus given to the jury, and too great a burden is put upon the defendant. *Balliet v. United States* (1904) 129 Fed. 689; *Myrick v. United States* (1915) 219 Fed. 1. The principal case proceeds upon the theory that a defendant cannot partially waive his constitutional privilege, and if he steps outside of the circle which the Constitution draws around him, he then subjects himself to the same rule as that applying to any other witness, and his silence may be the subject of comment and inferences drawn from it. This reasoning is generally followed in state jurisdictions. *State v. Ober* (1873) 52 N. H. 459; *Stover v. People* (1874) 56 N. Y. 315; *Cotton v. State* (1888) 87 Ala. 103. See Dunmore, Comment on Failure of Accused to Testify (1917) 26 YALE LAW JOURNAL, p. 464.

E. J. M.

EVIDENCE—EXPERT OPINION—FOUNDATION.—MALONE-MCCONNELL REAL ESTATE CO. V. SIMPSON AUDIT CO. (1916) 73 So. (ALA.) 369.—An accountant, conceded to be an expert, made a personal examination of the books of the defendant and of the audit of the same by the plaintiff, and stated that plaintiff's work was worthless, giving only some of the facts upon which his conclusion was based. *Held,* that the opinion of the accountant was rightly admitted.

The authorities are not uniform as to whether the opinion of an expert who has had the opportunity of examination is admissible, if he does not first give in detail the facts from which he has drawn his conclusion. Probably the weight of authority is that such testimony is inadmissible. *Raub v. Carpenter* (1902) 187 U. S. 159; *Sauntman v. Maxwell* (1900) 154 Ind. 114; *Scott v. Hay* (1903) 90 Minn. 304; *State v. Simonis* (1901) 39 Or. 111; *Kinney v. Brotherhood of American Yeomen* (1905) 15 N. D. 21; *Flanagan v. State* (1898) 106 Ga. 109. These courts say that the expert must first state the facts, so that the jury may judge whether the facts as well as the opinion are correct, and other experts may express an opinion on these facts. They say that it is the conclusion from the facts in evidence, not the general opinion of the expert, which is of interest to the jury. Where the facts are voluminous, complicated and difficult, some courts have admitted an opinion without a detailed state-